

BRETT L. TOLMAN, United States Attorney (#8821)
JARED C. BENNETT, Assistant United States Attorney (#9097)
Attorneys for the United States of America
185 South State Street, Ste. 300
Salt Lake City, Utah 84111
Telephone: (801) 524-5682

IN THE UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,	:	Civil Nos. 1:08 CV79 TC
Petitioner,	:	REPORT AND RECOMMENDATION
vs.	:	Honorable Tena Campbell
	:	Magistrate Judge David Nuffer
ROBERT J. DAVIDSON,	:	
Respondent.	:	

On July 11, 2008, the United States of America filed a petition to enforce its two November 29, 2007 IRS Summonses (“the Summonses”) pursuant to [26 U.S.C. §§ 7402\(b\)](#) and 7604(a). Judge Campbell issued an Order to Show Cause (“OTSC”) on July 14, 2008, which referred this matter to the undersigned for a hearing scheduled for September 9, 2008.

The OTSC directed Respondent to file a written response supported by sworn affidavits to the United States’ Petition to Enforce the Summons (“the Petition”) within ten days of the OTSC being served upon him. The OTSC also directed the undersigned to convene a hearing on September 9, 2008 at 10:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause as to why he should not be ordered to comply with the Summonses.

On September 3, 2008, Respondent filed a written response to the Petition stating that he was a “non-taxpayer,” among other arguments. Given that the Court of Appeals for the Tenth Circuit

has determined that arguments like those Respondent raised are “patently frivolous,” *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990), the undersigned did not find them persuasive to show cause as to why Respondent should not be ordered to comply with the Summonses.

Despite filing a written response, Respondent failed to appear at the September 9, 2008 hearing as ordered. Consequently, the undersigned issued a bench warrant for his arrest.

On March 20, 2009, Respondent was taken into custody under the bench warrant. Shortly after being arrested, the undersigned convened a hearing on the OTSC at which Respondent appeared *pro se* and the United States appeared through Assistant United States Attorney Jared C. Bennett. After the arguments and representations made in the written submissions and at the March 20, 2009 hearing, I report the following:

1. The United States has carried its burden of proof to enforce the Summonses. Through the Summonses and the declaration of the revenue officer that were attached to the Petition, the United States established that: (1) it sought the summoned information for a legitimate purpose, (2) the summoned information is relevant to the legitimate purpose, (3) the summoned information was not already in the possession of the United States; and (4) that the United States followed proper administrative procedures.

2. Once the United States has established its initial burden of proof, the burden shifts to Respondent to show why he should not be compelled to comply with the Summonses. Respondent has failed to show cause as to why he should not be ordered to comply with the Summonses. In any event, Respondent agreed at the hearing to comply with the Summonses.

Consequently, the undersigned recommends that:

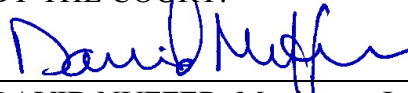
1. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summonses; and

2. The District Court order Respondent to provide the information required by the Summonses to the IRS no later than 30 days after the District Court adopts this Report and Recommendation.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a *de novo* determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 26th day of March 2009.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER, Magistrate Judge
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing REPORT AND RECOMMENDATION was e-mailed and mailed, first class postage prepaid, this 20th day of March 2009 to the following:

Robert J. Davidson (robot69@duddley.net)
89 West 100 South
Hyrum, UT 84319

/s/ Jared C. Bennett